

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID INMAN,

Plaintiff,

v.

Case No. 04-74652

PATRICIA CARUSO, et. al,

Honorable Patrick J. Duggan

Defendants.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on October 26, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff, an inmate at the G. Robert Cotton Correctional Facility, filed this pro se complaint on December 6, 2004, against Defendants Patricia Caruso (“Caruso”) and John Rubitschun (“Rubitschun”) pursuant to 42 U.S.C. § 1983. On March 9, 2005, Caruso and Rubitschun filed a motion to dismiss and for summary judgment arguing *inter alia* that Plaintiff has failed to exhaust his administrative remedies with respect to the named defendants or all of the claims in his complaint. On April 18, 2005, Plaintiff filed an amended complaint in which he named eight additional individuals as defendants. Caruso and Rubitschun thereafter filed a motion to stay discovery pending the Court’s ruling on

their dispositive motion. On September 21, 2005, Plaintiff filed a motion to dismiss the complaint without prejudice. Plaintiff seeks to dismiss the complaint so he can exhaust his administrative remedies and re-file, if necessary, a new cause of action reflecting events that have occurred since he filed his amended complaint. Defendants responded to Plaintiff's motion, indicating that they have no objection to the dismissal without prejudice. The Court has referred this matter to Magistrate Judge Paul J. Komives for all pretrial proceedings pursuant to 28 U.S.C. § 636.

On September 28, 2005, Magistrate Judge Komives issued a Report and Recommendation (R&R) with respect to Defendants' motion to dismiss and for summary judgment, Defendants' motion to stay discovery, and Plaintiff's motion to dismiss. In his R&R, Magistrate Judge Komives recommends that this Court grant Plaintiff's motion to dismiss and deem moot Defendants' pending motions. At the conclusion of the R&R, Magistrate Judge Komives advises the parties that they may object and seek review of the R&R within ten days of service upon them. Neither Plaintiff nor Defendants filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Komives. Accordingly,

IT IS ORDERED, that Plaintiff's motion to dismiss the complaint without prejudice is **GRANTED**;

IT IS FURTHER ORDERED, that Defendants' motion to stay discovery is **DENIED AS MOOT**;

IT IS FURTHER ORDERED, that Defendants' motion to dismiss and for summary judgment is **DENIED AS MOOT**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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Magistrate Judge Paul J. Komives